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09/767,056	01/22/2001	Kevin Chung	826.0006	9200

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EXAMINER

LIN, KENNY S

ART UNIT	PAPER NUMBER
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2154

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DATE MAILED: 07/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/767,056

Applicant(s)

CHUNG ET AL.

Examiner

Kenny Lin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Claims 1-16 are presented for examination.

#### ***Specification***

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

3. The abstract of the disclosure is objected to because it fails to fall within the range of 50-150 words. Correction is required. See MPEP § 608.01(b).

#### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-7 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- a. The following terms causes claim language indefinite:

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- i. Claim 1, line 20, “a server which is capable of providing” (i.e., it is unclear whether the server here is a different server from the previous introduced server in line 9. If not, change the claims language to “a different server which is capable of providing” or “a second server ...”).
- b. The following terms lack proper antecedence basis:
  - i. Claim 11, “diagnostic apparatus” (i.e., Claim 11 depends on claim 8, however, diagnostic apparatus was not introduced in claim 8 but in claim 10. Is claim 11 suppose to be depending on claim 10. Correction is required).

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 8-9 and 12-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Lu et al (hereinafter Lu), US 5,948,108.

8. As per claim 8, Lu taught the invention as claimed including, in a host computer, a system for establishing a communication link between a host computer and a communication network, comprising:

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- a. At least two communication tools, each of which is operable in response to a network connection request to establish a communication link with a server which is capable of providing a network access to said communication network over said communication tool (col.2, lines 21-24, col.3, lines 57-60, col.5, lines 11-18, defining access path); and
- b. A microprocessor for initialing network connection parameters of said host computer and sending a network connection request to a first communication tool to establish a communication link between said host computer and said communication network over said first communication tool, and resending a network connection request to a second communication tool to establish a communication link between said host computer and said communication network over said second communication tool if a server which is capable of providing a network access to said communication network over said first communication tool is determined to be inaccessible (col.1, lines 54-60, col.3, lines 35-41, 57-60, col.5, lines 11-18, 21-41, col.6, lines 2-15).

9. As per claim 9, Lu taught the invention as claimed in claim 8, Lu further taught to comprise an I/O control device for controlling a data flow among said microprocessor and said communication tools (col.3, lines 39-40, col.4, lines 63-67, col.5, lines 1-4).

10. As per claim 12, Lu taught the invention as claimed in claim 8. Lu further taught wherein said first communication tool is built in said host computer (col.3, lines 35-41).

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11. As per claim 13, Lu taught the invention as claimed in claim 12. Lu further taught wherein said first communication tool comprises a local area network device (col.3, lines 35-41, col.4, lines 16-18, SLISA, Ethernet).

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 1-3, 6 and 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lu et al (hereinafter Lu), US 5,948,108, in view of Kaffine et al (hereinafter Kaffine), US 6,654,914.

14. As per claim 1, Lu taught the invention substantially as claimed including a method for establishing a communication link between a host computer and a communication network, wherein said host computer is provided with at least two communication tools (col.1, lines 40-43, col.2, lines 21-27), said method comprising the steps of:

- a. Initializing network connection parameters of said host computer and sending out a network connection request to a first communication tool (col.2, lines 21-24, col.3, lines 57-60, col.5, lines 11-18, defining access path);

- b. Polling a server which is capable of providing a network access to said communication network over said first communication tool to determine whether said server is accessible over said first communication tool (col.5, lines 21-41, col.6, lines 2-15);
- c. Establishing a communication link between said first communication tool and said server which is capable of providing a network access to said communication network over said first communication tool if said server which is capable of providing a network access to said communication network over said first communication tool is determined to be accessible over said first communication tool (col.1, lines 54-57, col.5, lines 21-41, col.6, lines 2-15); and
- d. Establishing a communication link between a second communication tool and a server which is capable of providing a network access to said communication network over said second communication tool if said server which is capable of providing a network access to said communication network over a first communication tool is determined to be inaccessible over said first communication tool (col.1, lines 57-60, col.5, lines 21-41, col.6, lines 2-15).

15. Lu did not specifically teach to poll a server by means of a network diagnostic apparatus. Kaffine taught a network diagnostic apparatus that performs tests and analyze test results to determine network status (abstract, col.1, lines 65-67, col.2, lines 1-4, 10-13, 34-62). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Lu and Kaffine because Kaffine's teaching of using diagnostic

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apparatus in testing and analyzing network performance enables Lu's system to perform tests and obtain results of different network locations by distributing network diagnostic apparatus at various locations of the network (col.2, lines 45-46).

16. As per claim 2, Lu and Kaffine taught the invention substantially as claimed in claim 1. Lu further taught wherein said first communication tool is built in said host computer (col.3, lines 35-41).

17. As per claim 3, Lu and Kaffine taught the invention substantially as claimed in claim 2. Lu further taught wherein said first communication tool comprises a local area network device (col.3, lines 35-41, col.4, lines 16-18, SLSA, Ethernet).

18. As per claims 6 and 11, Lu and Kaffine taught the invention substantially as claimed in claims 1 and 8. Kaffine further taught wherein said network diagnostic apparatus comprises a ping utility (col.7, lines 25-31, col.14, lines 17-48). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Lu and Kaffine because Kaffine's teaching of using ping help Lu's system to determine whether the connection is successfully opened (col.14, lines 38-48).

19. As per claim 10, Lu taught the invention as claimed in claim 8. Lu further taught to poll the server to determine whether the server is accessible over the communication tool (col.5, lines 21-41, col.6, lines 2-15). Lu did not specifically teach to comprise a network diagnostic



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apparatus for polling said server. Kaffine taught a network diagnostic apparatus that performs tests and analyze test results to determine network status (abstract, col.1, lines 65-67, col.2, lines 1-4, 10-13, 34-62). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Lu and Kaffine because Kaffine's teaching of using diagnostic apparatus in testing and analyzing network performance enables Lu's system to perform tests and obtain results of different network locations by distributing network diagnostic apparatus at various locations of the network (col.2, lines 45-46).

20. Claims 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lu as applied to claims 8 and 12 above, and further in view of "Official Notice".

21. As per claim 14, Lu taught the invention substantially as claimed in claim 12. Lu did not specifically teach wherein said first communication tool comprises a modem device. However, "Official Notice" is taken that modem device is a network device well known and expected in the art used to establish communication. It would have been obvious to use a modem device as the network communication tool to establish communication. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Lu and the use of modem devices as the network device in establishing network communications.

22. As per claims 15-16, Lu taught the invention substantially as claimed in claim 8. Lu did not specifically teach wherein said first/second communication tool comprises one selected from a group consisting of a modem device, a cable modem, an integrated service digital network

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modem, an ADSL modem, and a satellite communication plant. However, "Official Notice" is taken that modem device, cable modem, ...etc. are network devices well known and expected in the art used for establish network communication. Furthermore, "Official Notice" is taken that the limitations narrowed by these claims are consider obvious and furthermore a matter of design choice. It would have been obvious to use a modem device as the network communication tool to establish communication. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Lu and the use of modem devices or other alternative devices as the network device in establishing network communications.

23. Claims 4-5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lu and Kaffine as applied to claims 1-2 above, and further in view of "Official Notice".

24. As per claim 4, Lu and Kaffine taught the invention substantially as claimed in claim 2. Lu and Kaffine did not specifically teach wherein said first communication tool comprises a modem device. However, "Official Notice" is taken that modem device is a network device well known and expected in the art used to establish communication. It would have been obvious to use a modem device as the network communication tool to establish communication. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Lu, Kaffine and the use of modem devices as the network device in establishing network communications.

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25. As per claims 5 and 7, Lu and Kaffine taught the invention substantially as claimed in claim 1. Lu and Kaffine did not specifically teach wherein said first/second communication tool comprises one selected from a group consisting of a modem device, a cable modem, an integrated service digital network modem, an ADSL modem, and a satellite communication plant. However, "Official Notice" is taken that modem device, cable modem, ...etc. are network devices well known and expected in the art used for establish network communication. Furthermore, "Official Notice" is taken that the limitations narrowed by these claims are consider obvious and furthermore a matter of design choice. It would have been obvious to use a modem device as the network communication tool to establish communication. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Lu, Kaffine and the use of modem devices or other alternative devices as the network device in establishing network communications.

### *Conclusion*

26. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Davis et al, US 6,370,586.

Zhang et al, US 6,687,748.

Hebert, US 6,718,383.

Davis et al, US 6,295,558.

Murrell et al, US 6,519,625.

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27. A shortened statutory period for reply to this Office action is set to expire **THREE MONTHS** from the mailing date of this action.

28. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenny Lin whose telephone number is (703)305-0438. The examiner can normally be reached on 8 AM to 5 PM Tuesday to Friday and every other Monday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (703)305-8498. Additionally, the fax numbers for Group 2100 are as follows:

Official Responses: (703) 872-9306

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)305-6121.

ksl  
July 14, 2004



JOHN FOLLANSBEE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100